

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RANDY WILSON, ET AL.,

No. C-00-2953 JCS

Plaintiffs,

v.

BRENDA HILTON, ET AL.,

Defendants.

**ORDER GRANTING APPLICATION TO
PROCEED IN FORMA PAUPERIS AND
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

I. INTRODUCTION

Plaintiff brings this action in pro se and seeks leave of this Court to proceed in forma pauperis. Plaintiff alleges a claim under 42 U.S.C. § 1983 based on his constitutional right to a parent-child relationship, as well as a conspiracy claim based upon the alleged § 1983 violation. In addition, he alleges state law tort claims for intentional and negligent infliction of emotional distress. The Complaint was assigned to a United States Magistrate Judge and Plaintiff consented to the jurisdiction of the undersigned. *See* 28 U.S.C. § 636(c).

Based upon the information contained in Plaintiff's Application To Proceed In Forma Pauperis, and good cause appearing, Plaintiff's Application To Proceed In Forma Pauperis is hereby GRANTED. Having granted Plaintiff's leave to proceed in forma pauperis, this Court must now review the allegations in the Complaint to determine whether it must be dismissed prior to service. Under 28 U.S.C. § 1915(e)(2)(B), a federal court must engage in a preliminary screening of cases in which a party is proceeding in forma pauperis and dismiss any claims which are: 1) frivolous or malicious; 2) fail to state a claim on which relief may be granted; or 3) seek monetary relief against a defendant who is immune from such relief. For the reasons stated below, Plaintiff's Complaint is

DISMISSED with leave to amend because he has failed to state a claim upon which relief may be granted.

II. BACKGROUND

Plaintiff, who is a resident of Humboldt County, California, brings this action individually and as guardian ad litem on behalf of his minor children, Christopher, Andrew and Krystle Wilson, all of whom are residents of Jackson County, Oregon. Complaint at 1-2. Plaintiff names the following individuals as defendants: 1) Brenda Hilton (resident of Oregon); 2) Daniel Harris (resident of Oregon); and 3) W. Bruce Watson (resident of Humboldt County, California). Plaintiff alleges that the Defendants violated his constitutional right to a parent-child relationship by interfering in various ways with his custody and visitation rights. Complaint at 3. Specifically, Plaintiff alleges the following facts with respect to Defendants:

- 1) W. Bruce Watson: Defendant Watson violated Plaintiff's rights when he "entered an order vacating jurisdiction of custody/visitation order in California"; Complaint at 3, ¶ 15.
- 2) Ross G. Davis: Defendant Davis violated Plaintiff's rights when he "entered an order restraining Plaintiff, Randy Wilson, from contacting his children based solely on hearsay testimony." Complaint at 3, ¶ 16.
- 3) Daniel Harris: Defendant Harris violated Plaintiff's rights when he "furthered the acts of Defendant Ross G. Davis, by renewing restraining order based on a letter from Plaintiff, Randy Wilson." Complaint at 4, ¶ 17. Plaintiff further alleges that Defendant Harris violated his rights when he "attempted to act a[s] Defendant, Brenda Hilton's attorney." *Id.* at ¶ 18.
- 4) Brenda Hilton: Defendant Hilton lied to the court and "sought to move to Oregon to forum shop for a sympathetic court who would listen to her allegations and sign ex-parte orders based on her word(s)." Complaint at 3, ¶ 14.

On the basis of these allegations, Plaintiff brings six causes of action, which he lists as follows:

- 1) deprivation of constitutional rights in violation of 42 U.S.C. § 1983; 2) declaratory relief;
- 3) conspiracy to violate 42 U.S.C. § 1983; 4) intentional infliction of emotional distress;
- 5) negligent infliction of emotional distress; and 6) intentional tort. The Court construes Plaintiff's

1 declaratory relief claim as a request for a declaratory judgment with respect to Plaintiff's § 1983
2 claim. He alleges that jurisdiction is based upon diversity, pursuant to 28 U.S.C. § 1332.
3 Complaint at 2.

4
5 **III. ANALYSIS**

6 **A. Jurisdiction**

7 This Court does not have jurisdiction in this action under 28 U.S.C. § 1332 because there is
8 not complete diversity among the parties named in Plaintiff's Complaint. In order to invoke federal
9 court jurisdiction under 28 U.S.C. § 1332, all plaintiffs must be of different citizenship than all
10 defendants. *Montrose Chemical Corp. v. American Motorists Insurance Co.*, 117 F.3d 1128, 1134
11 (9th Cir. 1997). Here, there are both plaintiffs and defendants who are residents of Oregon.
12 Similarly, there are plaintiffs and defendants who are residents of California. As a result, there is no
13 diversity jurisdiction in this action.

14 Federal question jurisdiction exists, however, because Plaintiff has alleged violations of
15 42 U.S.C. § 1983. Under 42 U.S.C. § 1331, federal district courts have original jurisdiction in
16 actions "arising under the Constitution, laws or treaties of the United States." In addition, where a
17 valid federal claim is stated, a federal court can exercise supplemental jurisdiction over related state
18 law claims asserted in the same action. *Hunter v. United Van Lines*, 746 F.2d 635, 649 (9th Cir.
19 1984). Therefore, if Plaintiff in this action can state a valid claim under federal law, this Court may
20 exercise supplemental jurisdiction over his state law claims. *Id.* Conversely, a federal district court
21 may decline to exercise supplemental jurisdiction where it has dismissed all claims over which it has
22 original jurisdiction. 28 U.S.C. § 1367(c).

23
24 **B. Section 1983 Claims**

25 All of Plaintiff's federal law claims (Claims One through Three) are based upon 42 U.S.C.
26 § 1983. In order to state a claim under this provision, a Plaintiff must allege facts showing that:
27 "(1) Defendants deprived him . . . of a right secured by the Constitution or laws of the United States
28 and (2) that, in doing so, Defendants acted under color of state law." *Jensen v. Lane County*, 222

1 F.3d 570, 574 (9th Cir. 2000) (citations omitted). Here, Plaintiff has not alleged any state action.
2 Moreover, while private actors may be liable under § 1983 if they conspire with a state actor, *Lugar*
3 *v. Edmonson Oil Co.*, 457 U.S. 922, 936-939 (1982), a bare allegation of conspiracy is insufficient to
4 state a claim under § 1983. *Burns v. County of Kings*, 883 F.2d 819, 821 (9th Cir. 1989). Thus,
5 even assuming that some of the Defendants may be state actors, Plaintiff has not satisfied the state
6 action requirement as to any other Defendants who are not state actors by alleging a conspiracy
7 under § 1983. As a result, Plaintiff has failed to state a claim as to Claims One through Three.

8 In order to remedy this deficiency, Plaintiff must allege specific facts showing that
9 Defendants were state actors or that they conspired with state actors. However, the Court notes that
10 if Defendants Harris, Davis and Watson are state court judges, as Plaintiff's Complaint suggests,
11 Plaintiff's claims are likely to be barred, both on the basis of absolute judicial immunity and under
12 the Rooker-Feldman doctrine. *See Mireless v. Waco*, 502 U.S. 9, 11 (1991) (holding that judges are
13 immune from liability unless claim is based upon non-judicial action or judicial action taken in the
14 absence of jurisdiction); *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (holding that
15 action may be dismissed as frivolous where a defense is "complete and obvious from the face of the
16 pleadings or the court's own records"); *Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991) (holding
17 that under 28 U.S.C. § 1257 and the Rooker-Feldman doctrine a federal district court lacks
18 jurisdiction to review or reverse a state court judgment and is also prohibited from issuing any
19 declaratory relief that is "inextricably intertwined" with the state court judgment).

20 With respect to Defendant Brenda Wilson, the only possible allegation of state action the
21 Court can discern is her pursuit of legal remedies through litigation in state court. It is well-
22 established that pursuit of state-created remedies by a private litigant does not constitute state action.
23 *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 485 (1988).

24 25 **C. State Law Claims**

26 In light of this Court's dismissal of all of Plaintiff's federal law claims, this Court declines to
27 exercise supplemental jurisdiction over Plaintiff's state law claims, which are dismissed as to all
28 Defendants without prejudice.

IV. CONCLUSION

For the reasons stated above, the Court ORDERS AS FOLLOWS:

- 1) Plaintiff's Application To Proceed In Forma Pauperis is GRANTED.
- 2) All of Plaintiff's federal law claims are hereby DISMISSED with leave to amend within thirty (30) days from the date of this Order for failure to state a claim upon which relief can be granted as to all Defendants.
- 3) Having dismissed all of Plaintiff's federal law claims, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims for intentional and negligent infliction of emotional distress and on this basis, the state law claims are DISMISSED as to all Defendants.
- 4) If Plaintiff amends his Complaint, pursuant to this order, to state any valid federal law claim, service of the Complaint upon Defendants will be ordered at that time. The Clerk is directed to close the file in this case if an Amended Complaint is not filed in this case within thirty (30) days.

IT IS SO ORDERED.

DATED: October 19, 2000

JOSEPH C. SPERO
United States Magistrate Judge